

Punitive effects of sentencing to a crime against honour: A Comparative study

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Abstract

The sentencing of a crime against honor has an impact on the assessment of the penalty, as the description of a crime as a breach of honor would increase the penalty, in addition to the impact of its commission on the suspension of the execution of the sentence, where the decisions of the Iraqi Court of Cassation tended not to stop the execution of the sentence in crimes against honor and to overturn the decisions of the competent courts issued to suspend the execution of the sentence in these crimes because these crimes reflect the bad morals of the perpetrators in addition to their bad impact on society, as for the impact of these crimes In the case of conditional release, the Iraqi legislator excluded in article (331/d) of the Code of Criminal Procedure No. (23) of 1971 amending some crimes against honor from the conditional release system.

Keywords: Punishment, Crimes against Honor, Iraqi Legislation, Original and Consequential Penalties,

1. Introduction

The sentencing of a crime against honor has objective implications for the assessment of the sentence and the suspension of its execution, in addition to the impact of this sentence on the system of conditional release, as the sentence of a crime against honor has serious effects such as consequential penalties, including removal from public office and deprivation of political rights as well as deprivation of certain rights and benefits. The importance of the research lies in the fact that the Iraqi legislator did not specify the crimes against honor exclusively and did not set an accurate standard for determining them, which has an impact on the specific punishment of the crime against honor.

2. Effect of sentencing for honour offence on the assessment of punishment

The sentence imposed must be proportionate to the facts of the crime and the circumstances of its commission, taking into account the importance of the crime committed, so that the penalty fulfils its purpose for which it was initiated, (Abdullah, 2009, p. 20), and this is what we will explain in the context of the crime against honor in the following two sections:

1.2. Increased punishment for honour offence

The legislator has defined a penalty for crimes against honor in the texts that criminalize them in their ordinary form, which are penalties that vary from one crime to another, and the penalty in this form is (a penalty that involves pain determined by the legislator in the Penal Code and imposed by the criminal judge by virtue of a judgment on those who are found responsible for the crime and are eligible to be imposed on him) (Al-Haidari, 2012, p. 885).

One of the general aggravating circumstances in the crime against honor provided for in the Penal Code is the commission of the crime with a despicable motive, the exploitation of the offender's status as an employee or the abuse of his authority (Article 135 of the Iraqi Penal Code), as well as recidivism in some crimes against honor is one of the general reasons for the aggravation of punishment, which is stipulated in Article (139/2/1) of this Law.

The judge is obliged to impose it on the perpetrator of that crime and thus serve as a reason to increase the penalty imposed on the criminal, and in application of this the Federal Court of Cassation ruled that "it is considered a legal reason to increase the penalty prescribed for the crime of breach of trust under Article (453) penalties for the fact that the money is seized by court order" (its decision No. (3157/felonies/1971).

If the Court of Cassation finds that the punishment imposed on the offender is light and not commensurate with the gravity of the honourable crime committed, it takes the initiative to overturn the sentence, and in application of this the Federal Court of Appeal of Baghdad/Karkh in its discriminatory capacity ruled that "the evidence obtained against the accused represented by the complainant's statements, witnesses, the record of the diagnosis and the confession of the accused was sufficient to criminalize him under the provisions of the article." 456/1) A crime of fraud from the Penal Code No. 111 of 1969 as amended, as for the penalty imposed on him, it was light and disproportionate to the seriousness of the crime assigned to him as it is a crime against honor, so he decided to overturn the decision to sentence the penalty and return the sentence to its court in order to increase the sentence) (Awad, 2018, p. 314).

Some legislative decisions and judicial applications have excluded some crimes that have been described as disturbing to honor, such as embezzlement and theft, from decisions to commute the sentence, as stated in a decision by which the criminalization and death sentence against the offender were ratified in accordance with article (4/1) in the sense of article (2/1) of the Anti-Terrorism Law for his disregard for the lives of people and the conditions of committing the crime that targeted the police and citizens in order to disturb security and provoke chaos for terrorist purposes (Federal Court of Cassation Decision No. 649/Expanded Criminal Authority/2014).

From the foregoing, it is noted that the judicial assessment of the penalty includes common elements, both objective and personal, as it has violated the personal and objective criterion in aggravating the penalty for a crime against honour.

2.2. Reduction of sentence for honour offence

The reasons for commutation of punishment in the Iraqi Penal Code are of two types, namely the reasons for mandatory mitigation (legal excuses) provided for exclusively by law, and the reasons for the mitigation of the passport (judicial circumstances), which require clemency for the offender, some of which the legislator has identified as exceeding the limits of the legal defense and others, while leaving the court with discretion to draw others from the facts of the crime and the circumstances of the offender, so we will address this within the scope of crimes against honor, as follows:

First: Legal excuses that mitigate the sentence: These excuses are intended exclusively for the reasons provided for in the law and which require commutation of the sentence (Ibrahim, 2008, p. 348), and these excuses are divided into (general mitigating excuses) which are stipulated in Article (128/1) penalties, namely the commission of the crime for the motive of Sharif or based on a serious provocation from the victim unjustly, and through what has been researched on the concept of crimes against honor and their subjectivity, the breach of honor is derived from the despicable motives of the perpetrator as well as the case with the Although the above article does not clarify the meaning of provocation, it takes the form of extreme anger of the offender resulting from the provocation of the victim and unjustly, while crimes against honor are intentional crimes and are not conceivable to be committed after the provocation as a justification.

As for (special mitigating excuses) their effect applies to specific crimes, and one of the crimes against honor to which the effect of these excuses applies is what is stated in the field of the crime of bribery (Article (Article (311) of the Iraqi Penal Code), where it is considered a mitigating excuse if the briber informs the judicial authorities or confesses after the court contacts the case and before the end of the trial therein and is exempted from the penalty if this is before the court contacts the case, as well as with regard to the crime of theft, although the legislator has increased its penalty. However, the Iraqi judiciary considers the "banality of stolen money" as a reason for commuting the sentence and in the sense of Article (446) penalties (Iraqi Court of Cassation Decision No. 166/Second General Assembly/1973).

It is clear from the foregoing that the reason for the exemption or commutation of punishment in these crimes, which have been described as a breach of honor, is to detect the crime and facilitate the arrest of the perpetrators because of the seriousness of these crimes to society.

Judicial circumstances that mitigate the sentence: The mitigating judicial circumstances are unlimited objective or personal characteristics that allow the judge to reduce the legally prescribed sentence for the crime in accordance with the standard established by law, (Al-Khalaf and Al-Shawi, p. 457), and in accordance with this Law the judge may reduce the sentence to a minimum or replace the penalty with a lighter one, which is left to the authority of the judge, since the mitigation in judicial circumstances is a passport estimated by the judge in accordance with the circumstances of the crime and the offender, and in application of this the Federal Court of Cassation ruled that (All the material circumstances of the crime and the personality of the accused must be noted when assessing whether or not there are grounds for the use of clemency (Awad, 2018, p. 316).

The legislator also determines under the system of mitigating judicial circumstances that the judge has the power to reduce the sentence to certain limits, so the judge may not exceed it regardless of the circumstances that require mitigation, he may bring it to the minimum permissible by law, which is what the legislator decides to reduce the penalty only to its own minimum or replace it with a sentence that is lighter than it is one or two degrees or more in the hierarchy of penalties (Habtoor, 2014, 187).

The legislator has adopted in the Iraqi Penal Code the system of mitigating judicial circumstances, which is stipulated in article (132) thereof, where it stipulates that "if the court considers in a felony that the circumstances of the crime or the criminal require clemency it may change the penalty prescribed for the crime.". Article 133 of this Law also stipulates that "if there is a circumstance in the misdemeanour that the court deems to call for clemency for the accused, it may apply the provisions of Article 131."

It is clear from the foregoing that the Court has the power to grant mitigating circumstances and is subject to the control of the Federal Court of Cassation in this regard, and the law provides for some of these circumstances without obliging the Court to adopt them when they exist, while leaving it to the Court to draw others from the facts of the case (Al-Hadithi, 2010, p. 462).

3. The effect of sentencing a crime against honor on the suspension of the execution of the sentence and conditional release

The sentencing of a crime against honor has an impact on the penalty in terms of whether or not to suspend its execution, which requires the statement of the authority of the trial court in this suspension, as well as that the sentence of a crime against honor has an impact on the application of the conditional release system, so we will show this in the following two sections:

3.1. The effect of sentencing honour offence on the suspension of sentence.

The system of suspension of execution of the sentence gives the judge the power to suspend the sentence on a condition of a situation during the period of probation determined by law, and this system is one of the best means of judicial exclusivity, which allows the judge to exclude the material element of the sentence if it is found that the offender is not dangerous to the security of society because of the lack of probability of returning to crime due to the weakness of his criminal inclinations (Ibrahim, 2008, p. 376).

The Iraqi Penal Code has adopted this system and its provisions in articles (144-149) thereof, and it is noted that the text of article (144) penalties has restricted the power of the court to suspend the execution of the sentence under specific conditions, stipulating that "the court, when sentencing a felony or misdemeanor to imprisonment for a period not exceeding one year, may order the suspension of the execution of the sentence if the convicted person has not previously been sentenced for a deliberate crime and has considered from his morals, past, age and circumstances of his crime that give rise to the belief that He will not return to commit a new crime..).

It is clear from this text that one of the conditions for suspending the execution of the sentence is that the sentenced person must be of good morals, and if the sentence is for a crime against honor, this will inevitably clash with the condition of the morals and biography of the sentenced person and deprive him of the suspension of the execution of the sentence.

Thus, the legislator granted the discretion of the judiciary to carry out the sentence or suspend its execution within the limits of the discretion granted by law, i.e. the court before taking a decision to suspend the execution of the sentence to ensure that the conditions of the said article (114) are met so that it can use the legal passport that entitles it to suspend the execution of the sentence.

However, we find that the decisions of the Iraqi Federal Court of Cassation exclude crimes against honor from this system, although the permissibility of suspension of execution for felonies and misdemeanours was absolute, but this does not prevent the judiciary from denying those who have committed certain crimes the benefit of the benefit of the suspension of execution, especially if these crimes violate honor such as theft, embezzlement, breach of trust, fraud and bribery.

Even further, the Federal Court of Cassation for Crimes against Honor sometimes goes on to overturn the decisions of the competent court to suspend executions because these crimes reflect the immorality of the perpetrators and therefore there is no justification for suspending the execution of the sentence for these crimes and taking advantage of the advantage of suspended, noting that there is no provision in Iraqi law that prevents the judge from suspending execution in crimes against honor, and in confirmation of this it ruled not to suspend the execution of the sentence according to article 144 penalties if the facts The case and its circumstances do not conflict with the issuance of the decision to suspend it because this means that the decision to suspend the execution of the sentence is inconsistent with the facts and circumstances that require the convict to serve the sentence imposed on him and in order for the justice of the sentence and the purpose behind the imposition of the sentence to take its normal course) (Decision No. 536/First Felonies/1986).

As for the position of the Iraqi Court of Cassation on the suspension of the execution of the sentence for the crime against honor through the decisions issued by it, including with regard to the crime of theft, where it ruled that "the court may suspend the execution of the sentence if the accused is in the prime of life and committed theft out of destitution and poverty because of his mother's illness and confessed to the crime immediately after its commission and returned the stolen money to its owners" (its decision No. 2880/felonies/1972), and then reversed that where it ruled that "theft crimes, including crimes of article (446) penalties of crimes Violation of honor and the execution of the sentence may not be suspended (Awad, 2018, p. 319).

3.2. Effect of sentencing for honour crime on conditional release

Conditional release is the release of a person sentenced to a sentence of deprivation of liberty, before the expiry of the term of his sentence if his conduct while in the penal institution shows a sign of confidence in the correction of his behavior, provided that he is subject to the obligations imposed on him to maintain his good conduct during the remaining period of his sentence, provided that he is returned to the penal institution to complete his sentence in full, upon breach of those obligations (Ibrahim, 2008, p. 391), and the Iraqi legislator has regulated the provisions on conditional release in articles (331-337) of the Code of Origins. Criminal trials, as this article in paragraph (d), excludes from the provisions of conditional release some convicts for crimes against honor, including financial crimes such as theft and embezzlement, crimes against morals and public morals such as rape, sodomy, incitement to debauchery and debauchery.

That conditional release is a means of uniqueness of punitive treatment by distinguishing convicted persons worthy of such treatment, and by reference to the nature of crimes against honor, what distinguishes them is the despicable motivation as they express weakness in morality and deviation in character and behavior, so those convicted of crimes against honor are not worthy of this uniqueness due to their despicable motives and weak and dishonest souls, so well what the Iraqi legislator did when he excluded some crimes that were described as dishonorable from police release.

As for the position of comparative legislation on the exclusion of crimes against honor from the conditional release system, the Egyptian legislator has regulated the provisions of release under a condition in the Law on the Organization of Prisons and has not excluded crimes against honor from this system as long as the Egyptian Penal Code or the Code of Criminal Procedure does not provide for the regulation of these crimes.

Noting that the Egyptian legislator has excluded the crimes stipulated in the Anti-
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Terrorism Law No. 94 of 2015, the Anti-Money Laundering Law No. 80 of 2002, the Anti-Narcotics Law No. 182 of 1960 from release under condition, under the recently issued Law No. 19 of 2020 amending the provisions of the Prisons Organization Law No. 396 of 1956 and the Anti-Narcotics Law No. 182 of 1960, it is clear from this that the crimes that the Egyptian legislator has recently excluded from Conditional release are crimes that have been described as dishonorable in comparative legislation.

The Jordanian legislator did not introduce the conditional release system, but rather introduced a similar system under the title of "Encouraging Treatment of Inmates", where it is stipulated in the Law on Correction and Rehabilitation Centers No. 9 of 2004 in article 34 thereof that "Correction and rehabilitation centers shall make the necessary arrangements to encourage inmates to improve their behavior to enable an inmate sentenced to imprisonment for one month or more, detention or hard labor to release him if he has served three quarters of his sentence."

As for the Omani legislator, he introduced the system of conditional release and called it in the Code of Criminal Procedure (conditional release) in article (309), which stipulates that "every person permanently sentenced to a penalty restricting liberty may be released under condition if he spends in prison two-thirds of the sentence period of not less than nine months, and his behavior while in prison calls for confidence in his self-evaluation, unless his release is a danger to public security..) It is clear from this text that the position of the Omani legislator is not much different from that of the Egyptian legislator when regulating conditional release.

The Omani legislator regulated the release and specified its conditions in the Prisons Law No. 48 of 1998, as amended, which stipulates in article 52 of the Code of Prisons the conditions to be observed by the released person, including that he must be of good conduct and conduct and not to communicate with people with bad conduct and other conditions.

The Omani legislature did not exclude crimes against honor from the release system but stipulated that the release should not pose a threat to public security, as stipulated by the Egyptian legislator and this requirement.

Conclusion

First: Results

The tendency of judicial applications to increase the penalty for crimes against honor, as one of the general aggravating circumstances in these crimes is the commission of the crime with a despicable motive, and this is indicated in article (135) of the Iraqi Penal Code No. (111) of 1969, as amended.

The Iraqi legislator exempted some crimes against honor from conditional release in article (331/d) of the Code of Criminal Procedure No. (23) of 1971, as amended, including the crime of theft and embezzlement and some crimes against morality such as waqaa, sodomy and incitement to debauchery and debauchery.

Second: Recommendations

The need to identify crimes against honour exclusively, and to establish a precise criterion for their identification, which restricts the authority of the judiciary to assess the punishment prescribed for these crimes, because of the serious effects of these crimes, as their commission entails many consequential penalties, and since these crimes are intentional and are committed with a despicable motive and severe penalties are prescribed for them, there is

no harm in specifying them exclusively.

Calling on the Iraqi legislator to review the wording of Article (331/d) of the Code of Criminal Procedure No. 23 of 1971, as amended, and to exempt some other crimes against honor from conditional release such as embezzlement and forgery because of their serious effects on the public interest.

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